

SWPP Technical Paper #5 - Best Management Practices for Non-WOTUS

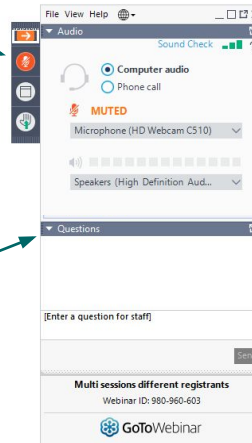
6/6/2022



Erin Jordan

Online Tools

- Muted
- Not Recording Today
- Use the Question Tool



Erin Jordan

- Good afternoon and welcome
- I'm Dr Erin Jordan of the Surface Water Quality Improvement Team
- Muted
- Not recording
- Question tool for the Q and A sections of today's conversation
- Sound Check!
- Introductions
 - I'm Dr Erin Jordan of the Surface Water Quality Improvement Team
 - Justin Bern, the VSM of the Surface Water Quality Protection Team can't be with us today, neither can
 - our Program Manager Dr. David Lelsz is out today but joins us in spirit
 - Theresa Gunn, Senior Lean Coach on ADEQ's Office of Continuous Improvement
 - Jonathan Quinsey who is the Legal Specialist mastermind on the effort to create the new Surface Water Protection Program

Agenda



- Introductions
- Overview of BMP Requirements for Rulemaking
- Review of paper
- Notes on ADEQ's Process

Erin Jordan

- Go through Agenda
- Pass off to Jonathan

Statutory Requirements



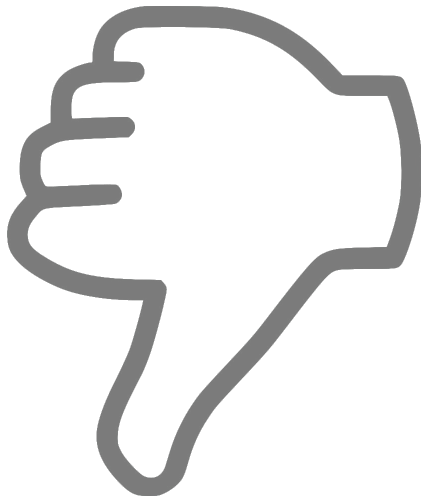
1. Mandated Best Management Approach
2. Adopt by Rule:
 - a. BMPs
 - b. Notification Requirements

Jonathan

1. For rulemaking purposes, HB2691 requires that ADEQ “use a best management practices approach when issuing and implementing general permits for storm water discharges from industrial or construction activity to non-WOTUS protected surface waters and may include analytical monitoring and discharge limits if best management practices cannot achieve applicable surface water quality standards.”
2. Additionally, the statute requires that “The director adopt, by rule, best management practices and notification requirements to ensure that the activities prescribed in this section do not violate applicable surface water quality standards.”
3. What are best management practices? A Best Management Practice is a practice or combination of practices considered by ADEQ to be an effective means of preventing or reducing the amount of pollution by nonpoint sources to a level compatible with water quality goals. These BMPs include technological, economic and institutional considerations.
4. Some BMPs are specific and well defined, while others are general in nature. The Permittee determines which BMPs to use based on permit requirements,

1. the facility's specific industrial materials, and the facility's specific activities. BMPs should be considered as a system or series of activities which may include multiple management options. These options can range from avoidance (education, training and planning) to minimization (litter control, street sweeping and secondary containment) to mitigation (construction of treatment structures).
2. A note at the top of this presentation. Remember that BMP rules adopted by ADEQ during the SWPP rulemaking will only apply to activities that are occurring in non-WOTUS protected surface waters. Although the list of non-WOTUS protected surface waters will likely change between the Initial and Final versions of the PSWL, the list will not be changed dramatically. If you have questions about what type of waters are protected by the SWPP program, please take the time to review the waters that ADEQ on the initial PSWL and the process for listing them that we discussed in our PSWL Technical Paper.

Statutory Requirements



ADEQ cannot adopt requirements for the following:

1. Discharges incidental to a recharge project
2. Established or ongoing farming, ranching and silvicultural activities
3. Maintenance of ditches
4. Construction and maintenance of irrigation ditches.
5. Maintenance of structures such as dams, dikes, and levees.

Jonathan

1. The statute also states a number of activities that ADEQ cannot adopt BMP requirements for, specifically:
 1. Discharges to a non-WOTUS protected surface water incidental to a recharge project.
 2. Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.
 3. Maintenance but not construction of drainage ditches.
 4. Construction and maintenance of irrigation ditches.
 5. Maintenance of structures such as dams, dikes and levees.
2. Once again, it's important to mention that the functional impact of this portion of the rulemaking is likely going to be very small.

Process



- Contracted with WestLand Engineering & Environmental Associates, LLC.
- Two-Part Analysis

Jonathan Quinsey

1. ADEQ is using a process that is very similar to our ESE analysis to adopt the BMPs approach that we're taking with the SWPP. We've contracted with WestLand engineering & environmental services to deliver two technical reports that address the BMPs ADEQ will use in the SWPP rulemaking. The first report was delivered June 30th of last year. The final report is in the process of being finalized. The technical paper that we released includes a copy of the first report along with engineering drawings related to the construction of BMPs.
2. ADEQ is still working to finalize the final report that will be included when we release the final white paper for public consumption. The version of the white paper we released to TRT implements much of what the contractor has prepared thus far.

BMP Categories



- Construction Phase
- Post Construction
- Erosion and Sediment Control
- Pollutant Management
- Design Consideration

- ADEQ's technical paper addresses five categories of BMPs that are slated for adoption during the SWPP rulemaking that are listed on this slide. Each of the sections in the paper includes a potential BMPs, activities those BMPs would apply to, and the rationale for the use of that BMP. ADEQ's focus on this 5 categories of activities was done at the suggestion of our contractor. The paper is fairly explanatory, so ADEQ isn't going to take up a ton of your time today and break down these BMPs in the presentation. If you have any specific questions after reading through the paper, please ask during the Q and A session today or reach out via email to David or I.

Summary of Rulemaking Plan



Chapter 9

Keeping the Program Separate for Federal Portions

Outside EPA Review

Technical Nature of Rules and Potential for Guidance

- We've spent a lot of time talking about modifications that ADEQ will make to Chapter 11 during these meetings, but this is probably the first time we've had a presentation regarding potential changes to Title 18, Chapter 9.
- Our rulemaking plan for Chapter 9 modifications is similar to the plan with Chapter 11, except that we intend to have an even lighter pen for the Chapter 9 modifications. If you are unfamiliar with ADEQ's proposed rulemaking plan for Chapter 11, please refer to the water quality standards. Much of the permitting portion of the statute is self-executing, and ADEQ does not want to build extensive, new permitting provisions and requirements without a better understanding of the future of WOTUS. I want to be clear about something in this meeting today, ADEQ is happy with the current permit structure that we rolled out with the Initial PSWL. We believe that our permits have bridged the gap between WOTUS and non-WOTUS waters fairly well and we don't have grand plans to make major changes to them.
- Chapter 9 modifications will likely implement exclusions of permit requirements that ADEQ can not apply to non-WOTUS protected surface waters. So rather than build entirely new sections of regulations, we would simply list which rules cannot apply to non-WOTUS permits. Once again, this is similar to the way our current permits are set up.

- The next slide is going to ask for stakeholder input on certain questions, and one of the things that ADEQ is really looking for your comments on is finding the right level of specificity in the rules that we adopt for BMPs. The technical nature of how some of these BMPs are implemented generally seems to be a better fit for guidance than rule, but ADEQ is limited on the guidance we can publish.
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Specific Areas of Input for Stakeholders



Notification Requirements

Applicable BMPs

Implementation Guidance

- The technical paper does not provide any in-depth analysis of potential notification requirements. ADEQ is dedicated to building a radically simple solution to this portion of the SWPP. We're looking forward to public comment on notification requirements that will meet the need for ADEQ to understand what's going on out in the field, but be simple to implement.
- The one bright line that ADEQ has established for the initial roll out of the SWPP is that we will not be mandatory notification through myDEQ with this initial roll out of the SWPP. The level of uncertainty regarding the reach of the SWPP when WOTUS is changing means ADEQ will be cautious in deploying large IT solutions during the initial adoption.
- The most important portion of the paper that we're looking for feedback on is the BMPs themselves and the rationale behind adopting them.
- Lastly, as I mentioned on the last slide, we're looking for stakeholder feedback about potential implementation guidance.



Q and A

Erin

For More Information:

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Erin